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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/553,837	04/21/2000	James R. Harte	70011940.07	6607

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EXAMINER

HAWKINS, CHERYL N

ART UNIT	PAPER NUMBER
1734	4

DATE MAILED: 12/06/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/553,837	HARTE, JAMES R.
	Examiner Cheryl N Hawkins	Art Unit 1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) 6,7,9 and 10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 April 2000 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The alternative language used in the claims makes it unclear as to what is meant by a labeling machine having the ability to detect the presence of an empty package or the absence of a package on a packaging machine system. For the purposes of examination, it will be assumed that the labeling machine has the dual ability of being able to detect either the presence of empty packages or the absence of packages on a packaging machine system.

### ***Claim Objections***

2. Claim 6 is objected to because of the following informalities: "the row being labeled" in line 2 of the claim should be marked --a row of packages being labeled--. Appropriate correction is required.
3. Claim 7 is objected to because of the following informalities: "such" in line 8 of the claim should be replaced with --the--. Appropriate correction is required.

4. Claim 7 is objected to because of the following informalities: “such” in line 9 of the claim should be replaced with --the--. Appropriate correction is required.

5. Claim 9 is objected to because of the following informalities: “claim 7” in line 2 of the claim should be marked --claim 8-- OR “the step of communicating in line 2 of the claim should be marked --the step of utilizing multiple sensors and communicating--. Appropriate correction is required.

6. Claim 10 is objected to because of the following informalities: “An” in line 1 of the claim should be marked --A--. Appropriate correction is required.

7. Claim 10 is objected to because of the following informalities: “detecting an empty package” in line 1 of the claim should be marked --detecting either an empty package--.. Appropriate correction is required.

8. Claim 10 is objected to because of the following informalities: “the row being labeled” in line 4 of the claim should be marked --a row of packages being labeled. Appropriate correction is required.

9. Claim 10 is objected to because of the following informalities: “articles” in line 7 of the claim should be marked --packages--. Appropriate correction is required.

10. Claim 10 is objected to because of the following informalities: “articles” in line 7 of the claim should be marked --packages--. Appropriate correction is required.

11. Claim 10 is objected to because of the following informalities: “bit” in line 8 of the claim should be marked --bit information--. Appropriate correction is required.

12. Claim 10 is objected to because of the following informalities: “positioning” in line 9 of the claim should be marked -- placement--. Appropriate correction is required.

13. Claim 10 is objected to because of the following informalities: “articles” in line 11 of the claim should be marked --packages--. Appropriate correction is required.

14. Claim 10 is objected to because of the following informalities: “such” in line 12 of the claim should be marked--the--. Appropriate correction is required.

*Allowable Subject Matter*

1. The following is a statement of reasons for the indication of allowable subject matter:

As to Claims 1, 7, and 10, Matsuguchi (US 4,585,506) discloses a labeling machine having the ability to detect the absence of a package (abstract), the labeling machine comprising at least one proximity sensor (Figure 1, article detector 8) placed in front of the labeling machine to detect the absence of a packaging on a packaging machine prior to the empty space on the packaging machine reaching the labeling machine and to communicate information to the

machine such that the labeling machine will not dispense a label for an absent package on the packaging machine system (column 3, lines 3-13 and 34-38). Matsuguchi is silent as to the labeling machine having the ability to detect the presence of an empty package on a packaging system.

Del Rosso (US 4,025,382) discloses a label application apparatus, which includes a proximity sensor for detecting the presence of articles to be labeled (column 5, lines 15-18).

Stewart et al. (US 6,295,881) discloses that the use of proximity detectors is well established for detecting or sensing the level of materials in a storage container or for detecting the presence of an article on a production line (column 1, lines 11-17). Stewart et al. also discloses that proximity detectors have been conventionally produced in many forms including capacitive detectors, which sense the change in capacitance between two points (column 1, lines 17-25).

Philipp et al. (US 5,966,908) discloses a packaging machine includes a detector for detecting whether articles are present within specified areas on an infeed conveyor to ensure that an empty package is not formed by the packaging machine (abstract).

Schjerven et al. (US 5,400,838) discloses an automatic packaging machine in which a capacitive sensor is positioned above the top of a container to determine the presence of objects piled above the top of the container and to sense when a container has been filled (abstract; column 8, lines 67-68; column 9, lines 1-4).

The prior art of record fails to teach or disclose any motivation for a labeling apparatus or method including proximity sensor(s) which have the dual ability of being able to detect the presence of empty packages and the absence of packages on a packaging machine system.

***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl N. Hawkins whose telephone number is (703) 306-0941. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (703) 308-3853. The fax phone numbers for the organization where the application or proceeding is assigned is (703) 305-7715 or (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone numbers is (703) 308-0661.

Cheryl N. Hawkins

*Cheryl N. Hawkins*

December 3, 2001

*R. Crispino*

RICHARD CRISPINO  
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